IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 158 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHADA KHET MAJUR SAHKARI MANDALI LTD

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner

MR HM BHAGAT for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 3

NOTICE SERVED for Respondent No. 5

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 06/03/2000

ORAL JUDGEMENT

1. Rule. Mr.M.A.Bukhari, learned Assistant Government Pleader appears and waives service of rule on

behalf of the respondent nos. 1 to 4. So far as the respondent No.5 is concerned, notice was issued by this court on 12.1.1999 by making it returnable on 21.1.1999. Though he is served, as per the endorsement on the board, he does not appear. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This petition is filed by the petitioner for an appropriate writ, order or direction quashing and setting aside the order passed by the Collector, Surat-respondent No.2 herein on November 29, 1991 as also by the Additional Director on 20.8.1993 and by the State Government on 14.7.1995.

3. The case of the petitioner was that, it is a co-operative society of labourers registered under the Gujarat Co-operative Societies Act, 1961. It made the application on February 6, 1991 for grant of lease of 4.90 hectors of land on Tapi river bed, opposite block No.87 and 88 of village Bhera, Taluka Kamrej, District Surat. The said application was rejected on the ground that, approach road belonged to a private person and since he had objection, prayer for grant of lease cannot be granted in favour of the petitioner society. It may be noted at this stage that respondent No.5 also made an application on February 11, 1991 in respect of the same land subsequent to the application filed by the petitioner. The said application was also rejected by the Collector by order dated March 30, 1991. The ground put forward by the Collector, however, was that it overlapped the area in respect of which lease was granted to the same party, that is, respondent No.5. It appears that, being aggrieved by the order passed by the Collector, the respondent No.5 filed the appeal on September 24, 1994, that is, after about 18 months. The appellate authority, by an order dated June 1, 1993 allowed the appeal filed by respondent No.5. In the order itself, it is mentioned that in respect of the land in question, the application had been made by Bhada Khet Majoor Sahkari Mandali on February 6, 1991 (i.e. petitioner - society) and application by respondent No.5 was subsequent in point of time i.e. on February 11, 1991. It also appears from the order that though the petitioner was co-operative society and as per the policy of the Government, preference ought to have been given to it, the application was rejected. Neither notice was issued nor the petitioner - society was afforded opportunity of hearing and the appeal filed by the respondent No.5 was allowed.

4. In view of the order passed by the appellate

authority in favour of the respondent No.5, the petitioner also preferred an appeal before the appellate authority. It was, however, dismissed on the ground of limitation which is clear from the order dated August 20, 1993 wherein it was stated that the appeal was required to be filed within a period of 60 days and since it was filed after about 1 and 1/2 year, it was liable to be dismissed only on the ground of limitation. Revision Application was filed before the State Government was also rejected by order dated July 14, 1995 inter alia observing that though revision was entertained and further proceedings were initiated, in view of a letter written by the petitioner - society on February 10, 1994 wherein the petitioner stated that it had no interest in the matter, revision application was required to be filed. Being aggrieved by these orders, the petitioner has filed the present petition.

5. Several contentions were raised by Mr.Majmudar, learned counsel for the petitioner. It was submitted that, initial order was illegal, contrary to law and void ab-initio inasmuch as the ground put forward by the Collector was incorrect that the application of the petitioner could not be granted as approach road belonged to a private party and he had objection in granting lease in favour of the petitioner. It was not ground as is clear from the order passed on March 30, 1991 against the respondent No.5 wherein it was stated that there was overlapping of lease area. Again, though there was delay of about 18 months in filing appeal by the respondent No.5, it was not only entertained but allowed and almost similar delay of 1 and 1/2 year was treated as fatal in case of the petitioner and his appeal was summarily dismissed only on the ground of limitation. Regarding revision application and communication dated February 10, 1994, it was stated in the petition that at the relevant time proceedings were initiated against the petitioner co-operative society for liquidation. Looking to the record also it appears that action was taken against the petitioner - society and even liquidation order was passed. It is, however, clear that on September 30, 1997, the petitioner co-operative society was again revived and to that effect an order was passed which is on record. In these circumstances, the petitioner has approached this court. Mr.Majmudar, therefore, submitted that, authorities may be directed to decide the matter afresh in accordance with law, more particularly, in the light of the allegations and averments made by the petitioner that though lease was granted in favour of the respondent No.5, no lease deed was executed and the respondent No.5 is not interested in the lease. As

stated above, though the respondent No.5 was served, he did not appear.

6. Mr.M.A.Bukhari, learned Assistant Government Pleader, supported the order passed by the authority. He submitted that apart from the dismissal of the appeal by the appellate authority, it cannot be said that revisional authority had committed an error of law in rejecting the revision. The petitioner itself had requested the revisional authority that it was no more interested in the matter and revision may be disposed of. He, therefore, submitted that the petition deserves to be dismissed.

7. In the facts and circumstances of the case, in my opinion, the petition deserves to be partly allowed. So far as the order passed by the Collector is concerned, it is clear that the reason put forward by the Collector was not correct. The Collector does not appear to be consistent when he dealt with the application of both the parties, namely, the petitioner and respondent No.5. So far as the petitioner is concerned, the ground put forward by the Collector was that approach road belonged to a private party and he had objection and no lease could be granted in favour of the society. While deciding the application of respondent No.5, the ground stated by him was that there was overlapping of lease area. Again before the appellate authority, there was almost similar delay of 1 and 1/2 year in filing the appeal by both, the petitioner as well as the respondent No.5. The appeal of the respondent No.5 was entertained and allowed, whereas the appeal filed by the petitioner was dismissed as time barred and disposed of on the ground of limitation. Regarding revision application, it is true that, when the order was passed, it cannot be said that revisional authority was not right in dismissing the revision application in pursuance of the communication dated February 10, 1994 by the petitioner society. But, in view of the subsequent development and the order dated September 13, 1997 reviving the petitioner society, in my opinion, ends of justice would be met, if the appellate authority is directed to decide the appeal on its own merits by condoning the delay and by passing appropriate order in accordance with law.

8. I may also state that, since the respondent No.5 does not remain present here, it is open to the appellate authority to issue notice to the respondent No.5 also so that even his case can be considered by the authority. The authority will pass appropriate order. Rule is made absolute to the aforesaid extent. In the facts and

circumstances of the case, no order as to costs.

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(pathan)